



S.A No. 299 of 2013

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A No.299 of 2013

1.Maharajan
2.Sundari
3.Karpagam
4. Vasantha

... Appellants

Vs.

1.Chandravanam
2.Selvaraj
3.Palanisamy
4.Senbagavalli
5.Indrani
6.Mariyappan

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree dated 20.09.2012 made in appeal suit No. 6 of 2011 on the file of the Court of the Principal District and Sessions Judge, Ariyalur, reversing the Judgment and decree dated 30.10.2010 made in O.S No.13 of 2002 on the file of the Subordinate Judge's Court at Ariyalur.



S.A No. 299 of 2013

For Appellants : Mr.M.V.Krishnan
For R1 to R3 : Mr.Krishna Prasad for
M/s. Saruabhauman Associates
For R4 : Exparte
For R5 & R6 : No appearance

JUDGMENT

The appellant herein are the defendants 5,6 and 7 in suit O.S No. 13 of 2002 on the file of the Sub Court, Ariyalur, filed by the respondents 1,2,3 herein/plaintiffs for the relief of partition of their 21/30 share in the suit property, by contending that all the properties are joint family properties belongs to one Kaliaperumal as his legal heirs they are entitled for 21/30 share. The first defendant is one of the son of Kaliaperumal contested the suit stating that he has no objection with regard to item No. 1 to 10 of the suit property. With regard to item No. 11,12,13 he submitted that after division taken place in the year 1995 he purchased the item No. 11,12,13 of the suit property out of his own income in which plaintiffs has not right, Item No. 14 is self acquired property of his wife/



S.A No. 299 of 2013

seventh defendant. The Trial Court framed separate issues and on considering the evidence on both sides held that item No. 1 to 10 are the joint family property in respect of that granted relief of partition in favour of the plaintiff and with regard to item No. 11 to 14 held that it is separate property of the first defendant and his wife/seventh defendant to that effect suit was dismissed.

2. Aggrieved and dissatisfied over the same, with regard to item No. 11 to 13 the plaintiff preferred an appeal in A.S No. 06 of 2014 before the Principal District and Sessions Court, Ariyalur, wherein lower appellate Judge independently analysed the facts and evidence and held that there was division taken place in the family thereby held that item No. 11 to 13 are joint family properties and out of income derived from the common property item No. 11 to 13 were purchased in the name of the first defendant. Accordingly, appeal was allowed in respect in item No. 11 to 13 and with regard to item No. 14 it was as separate property of the wife/seventh defendant to that effect the suit was dismissed.

3. Challenging the same the first defendant purchaser of the item No. 11 to 13 preferred this second appeal and the same was admitted with the following substantial questions of law:



S.A No. 299 of 2013

WEB COPY

i. Whether the learned District Judge ought to have confirmed the well considered finding of the trial Court based on documentary and oral evidence that the items 11 to 13 of the suit properties were purchased by the first defendant in his name out of his income.

ii. Whether the findings that item No. 1 to 13 are joint family properties and granting that the plaintiffs' 21/30 share in those properties is perverse.

4. The brief facts of the case are as follows:

The first plaintiff is the mother of the plaintiff 2 and 3 and defendants 1 to 3 all are legal heirs of the deceased Kaliaperumal it is an admitted fact. The case of the plaintiff is that item No. 1 to 14 of the suit properties are the joint family properties after the demise of Kaliaperumal in the year 1984 the family and the properties were managed by the first defendant, and out of income derived from the joint family properties from item No. 1 to 10 the remaining item No. 11 to 14 of the suit properties were purchased. The defendant refused for amicable settlement hence the suit.

5. The first defendant has no objection with regard to item No. 1 to 10 but with regard to item No. 11 to 14 he raised objection by stating that item No. 11 to 13 were purchased out of his self income after division of the family property in the year 1984, item No. 14 is self acquired property of



S.A No. 299 of 2013

his wife/seventh respondent. The Trial Court accepted the first defendant contention and granted relief of partition with regard to item No. 1 to 10, 15 and dismissed the suit with regard to item No. 11 to 14. The learned counsel for the first defendant argued that the lower appellate Court erroneously concluded that item No. 11 to 14 of the suit properties were purchased in the name of the first defendant out of joint family income derived from item No. 1 to 10. But the plaintiff failed to prove that it was purchased out of joint family fund. Hence in respect of item No. 11 to 13 the appeal preferred by the first defendant/subsequent purchasers of that suit property prayed to set aside the findings of the Court below.

6. The point to be decided is whether item No. 11 to 13 purchased out of joint family income is proved by the plaintiff or it is separate property of the first defendant.

7. The case of the plaintiff is that after demise of one Kaliaperumal in the year 1984 the family properties were managed by elder son/ first defendant as Kartha of the family. Furthermore the third plaintiff was worked in Co-operative spinning mill and he used to give his income to the family, with help of derived income from him and from the joint family



S.A No. 299 of 2013

properties, first defendant purchased properties in his the name as Kartha.

Hence the initial burden is on the plaintiff to prove Item No.11 to 13 of the properties purchased out of joint family nucleus. It is also admitted fact that in the year 1988 Kaliaperumal died intestate. The contention of the first defendant is that Item No. 11 to 13 of the suit properties was purchased in the year 1985 as he got separated from the family living in separate residence and earned separate income, from which the above said properties was purchased. But the plaintiff denied the first defendant contention by stating that no partition was effected in the family after marriage of the first defendant there is ancestral house in which the first defendant occupied one portion and in other portions the plaintiffs and other were lived, these facts also elucidated from the evidence of P.W.1. as well as first defendant. As per the evidence of D.w. 1 he submitted that near about one lakhs was spent to repair the ancestral house in the year 1985 after that he lived in one portion and other members lived in other portions. P.W.1 admits about the repairing of the house but it was done by the first defendant as Kartha of the joint family. Admittedly, second defendant also employed in Thirunelveli Cooperative Bank, he used to sent amount to the account of the first defendant and the same was utilized for the repairing house, to prove the



S.A No. 299 of 2013

same on the side of the plaintiffs Bank statement along with file receipts was marked as Ex.A12, which reveals that from the account of the third plaintiff amount were sent to the first defendant. So, the second plaintiff also contributed his income to the joint family, which proved with the help of Ex.A.12 properties are enjoyed as joint family property till the demise of Kaliaperumal is admitted by the both the parties, indeed Item No. 1 to 10 are agricultural lands belongs to the joint family so plaintiffs able to establish that the family have sufficient source of income. Under law the family had sufficient income is the presumption and it can be repudiate by the first defendant by adducing contra evidence to show that item No. 11 to 13 were purchased out of his income and not from income of joint family property.

8. The learned counsel for the plaintiff submitted that if the properties stands in the name of the Kartha he has to prove that he had separate and independent income and also should prove there was no existence of ancestral nucleus in joint family properties by relying the ratio laid down in this Court in P.R. Kannaiyan (died) and others Vs Ramasamy Mandiri in 2005 (4) CTC 547:

36. In the decisions of the learned single Judge, relied upon by the counsel



for the respondents, there is no reference to earlier decision Sankaranarayanan and Anr. v. The Official Receiver, Tirunelveli and Ors., , nor there is any reference to the decision of the Division Bench reported in summary form in Ramiah and Anr. v. Pechi Animal and Ors., 1977 TLNJ 7. Similarly, the decision of the Supreme Court in Mallesappa Bandeppa Desai and Anr. v. Desai Mallappa alias Mallesappa and Anr., , seems to have not been noticed. From the decisions of the Supreme Court in Mallesappa Bandeppa Desai and Anr. v. Desai Mallappa alias Mallesappa and Anr., , Sankaranarayanan and Anr. v. The Official Receiver, Tirunelveli and Ors., , and also from the observations made by the Allahabad High Court in Bhagwant Kishore and Anr. v. Bishambhar Nath and Ors., and in Mayne's Treatise on "Hindu Law & Usage", and all other decisions noticed above, it is apparent that an exception is carved out in the matter relating to acquisition in the name of Karta, where it is proved that Karta had no independent income and he is in possession of some nucleus and not necessarily sufficient nucleus of the joint family property. In such a case, even where sufficient nucleus is not proved but existence of some nucleus is proved and it is further proved that Karta or Manager, in whose name property had been purchased, had no independent income, the burden is shifted to the Karta to prove that the property has been acquired without the aid of the joint family and with the own separate income of the Karta or the Manager. We hasten to add that such principle is inapplicable, where it is shown that Karta has some separate and independent income, in which event, the normal principle that it is for the person claiming a particular acquisition to the joint family property to prove that there was sufficient surplus from the joint family property from out of which the property in question could have been acquired.

9. Further he relied Judgment of this Court in ***Malla Naicker @ Singari and others Vs Jeeva (minor) and others 2012 (1) CTC page 128***

22. The other judgments relied upon by the learned counsel for the appellants is not applicable to the fact of the case on hand. Therefore, having regard to the fact that the joint family possessed of ancestral properties and the appellants failed to prove through satisfactory evidence that they were running a separate business from which they have derived income and the fact that the first appellant is the Kartha of the joint family and the properties were purchased in his name and in the name of his wife, the legal presumption is that the ancestral properties must have provided the nucleus and the burden is on the Kartha to prove that the properties were not purchased from out of the income derived from the joint family and it was purchased from his own income.

10. By way of reply the learned counsel for the appellant/defendant submitted that during evidence P.W.1, he admitted that



S.A No. 299 of 2013

they are living separately in one portion of the ancestral house and the evidence of the plaintiff itself proves that family was already divided and there is no joint family property at the time of purchase of Item No. 11 to 13 in the year of 1986. However, plaintiff able to establish that there was joint family properties item No. 1 to 10 all were agricultural properties and presumed that it has sufficient income. Apart from that, third plaintiff also employed he used to send amount in the same account was proved through Ex.A.12 so the plaintiffs able to establish that there was joint family nucleus and sufficient source of income from the item No.1 to 10. Now, the burden shifts on the first defendant to prove that he had separate income and the family has no joint family nucleus to purchase the properties. The defendant relied the evidence of P.W.1 admitted that in the year of 1985 onwards they lived separately. But on analysing the evidence of P.W.1 as well as D.W.1 around year of 1985 in the ancestral house One portion occupied by the plaintiffs and another portion by first defendant family mere living of separate evidence would not amount to valid partition and the first defendant bound to establish already division was taken place in the family with concrete and material evidence. With regard to Item No. 1 to 10 first defendant admitted that possession of joint family properties. But no where



S.A No. 299 of 2013

he stated about the properties were divided among the family members and which are all the properties allotted to him as per 1985 division, absolutely no evidence on the side of the first defendant to prove factum of the divisions among the legal heirs of the Kaliaperumal after 1985. The first appellate Judge appreciated these facts which needs no interference by this Court. Furthermore, as per the recitals found in the sale deed Ex.A1 and Ex.A18 and 19. with regard to Item 11 to 14 of the suit properties sold to the fifth and sixth defendant, in that sale deed first mentioned as follows

“....எனக்கு சொந்தமாகவும் நான் 13.01.1986ல் சொத்தை வாங்கி மேற்படி பத்திரம் ஜெயங்கொண்டம் சார்பதிவுகத்தில் 1.1164.53.21/1986 எனக் கொண்ட பத்திரமாகவும், எனப் பொது குடும்பத்தில் ஏற்பட்ட பாக ஏற்பாட்டின்படியும் எனக்கு பாகமாக கிடைத்தும் எனப் பெயரில் பட்டா எண் 1076 எண்ணாக ஏற்பட்டும் நான் அனுபவித்து வருகிற.....”

11. So the above recitals reveals that there was joint family properties and the same was allotted to him was sold to the purchasers. On considering the purchase of item No. 11 the first defendant contend that it was purchased out of his income but from the above recitals it clearly indicates that properties were not purchased out of separate income of first defendant. So the first defendant failed to establish that item No. 11 was



S.A No. 299 of 2013

purchased out of his income and same was rightly appreciated by the first appellate Judge which needs no interference. Though the first defendant claimed he had sufficient income to purchase the property but there is no evidence to prove that separate income earned himself and also no evidence adduced on his side to prove the properties as well as he had separate income from the year 1985. when he failed to establish that he had separate income then the properties stands in the name of him assumes the character of joint family property, for the reason that already plaintiff established the family had sufficient income. Therefore, the first appellate Judge rightly appreciated the evidence on both sides and held that item No. 11 to 13 purchased out of joint family fund which needs no interference. Further, the ratio laid down in the above referred authority relied by the plaintiff is squarely applicable to facts of the present case. Accordingly, the defendant failed to establish that he had separate income to purchase the item No. 11 to 13. Furthermore, he failed to establish that already division taken place in the family after 1985 that apart mere living in separate portion of property is not sufficient to conclude that there was valid partition. But plaintiffs established that there was joint family properties out of which sufficient income was derived through which item No.11 to 13 were purchased.



S.A No. 299 of 2013

WEB COPY

12. Hence, the findings given by the first appellate Judge is sustainable accordingly questions of law one and two are answered. The second appeal is dismissed as devoid of merits. Consequentially suit is decreed in favour of plaintiffs with regard to of item No. 1 to 13 and 15 in which plaintiffs entitled for 21/30 shares. Further, With regard to item No. 14 suit is dismissed. No costs.

19.10.2022

pbl



WEB COPY



S.A No. 299 of 2013

T.V.THAMILSELVI,J.

Pbl

To

1. The Principal District and Sessions Court, Ariyalur.
2. The Subordinate Court, Ariyalur.

SA.No.299 of 2013

19.10.2022